

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

ALEX ALBRITTON,  
DARNELL ALBRITTON,

Debtors.

Case No. 04-48020  
Chapter 13  
Hon. Marci B. McIvor

OPINION DENYING TRUSTEE'S OBJECTION TO THIRD APPLICATION FOR  
APPROVAL OF PAYMENT OF POST-CONFIRMATION ATTORNEY FEES THROUGH  
CHAPTER 13 PLAN

This matter came before the Court on the Trustee's Objection to Third Application for Approval of Payment of Post-Confirmation Attorney Fees Through Chapter 13 Plan. The Trustee objects to the third fee application on the grounds that: (1) under 11 U.S.C. § 331, a debtor's attorney may only apply to the court once every 120 days for compensation and, in this case, the third fee application was filed only 69 days after counsel filed his second fee application; and (2) counsel's hourly rate of \$240/hour is excessive. Having fully reviewed the file, the third fee application, and the objections thereto, the Court DENIES the objections and awards attorney fees in the amount of \$270.00 and costs in the amount of \$17.30, for a total award of \$287.30. The total compensation requested to date is \$3,273.41, counsel having previously been awarded \$2,985.39.

I.

FACTS

Debtors Alex and Darnell Albritton filed a Chapter 13 bankruptcy petition and

chapter 13 plan on March 19, 2004. On June 18, 2004, Debtors' chapter 13 plan was confirmed. On December 2, 2005, the Court entered an order allowing Debtors to incur post-petition debt to pay off their chapter 13 plan early. This Order expired on or about February 2, 2006. A new order allowing Debtors to incur post-petition debt was entered on February 15, 2006.

Counsel filed his first fee application on December 6, 2004 and his second fee application on December 2, 2005. No objections were filed in response to either of those fees applications and orders were entered approving both. Fees and costs awarded in the first and second fee applications totaled \$2,985.39.

On February 10, 2006, Counsel filed his Third Application for Approval of Payment of Post-Confirmation Attorney Fees Through Chapter 13 Plan for the dates of January 31, 2006 through February 9, 2006. The subject fees were incurred to extend the order allowing Debtors to incur post-petition debt to pay off their chapter 13 plan and to advise Debtors regarding their tax refund obligations. The third fee application seeks attorney fees in the amount of \$270.00 and costs in the amount of \$17.30, for a total award of \$287.30. The total compensation requested from all three fee applications total \$3,273.41.

On February 22, 2006, the Trustee filed objections to the third fee application on the grounds that: (1) under § 331, a debtor's attorney may only apply to the court once every 120 days for compensation and, in this case, the third fee application was filed only 69 days after counsel filed his second fee application; and (2) counsel's hourly rate of \$240/hour is excessive.

A hearing on the Fee Application was held on March 16, 2006.

II.

ANALYSIS

A. Jurisdiction

This is a core proceeding under 28 U.S.C. § 28 U.S.C. 157(b)(2)(A), over which this Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(a).

B. Standard for Awarding Fees

The Bankruptcy Code, 11 U.S.C. § 330(a), codifies the criteria for evaluating fee requests. Section 330(a) states, in part:

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 --

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any para-professional personal employed by any such person; and

(B) reimbursement for actual, necessary expenses.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant facts, including

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue or task addressed; and

(E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for --

(i) unnecessary duplication of services; or

(ii) services that were not --

(I) reasonably likely to benefit the debtor's estate; or

(II) necessary to the administration of the case.

\* \* \*

To summarize, 11 U.S.C. § 330(a) requires that requested fees must meet three conditions. The fees must be: (1) reasonable; (2) incurred for services that were actually rendered; and (3) incurred for services that were necessary. *In re Allied Computer Repair, Inc.*, 202 B.R. 877 (Bankr. W.D. Ky. 1996).

The Sixth Circuit has adopted a "lodestar method" for actually applying the requirements set forth in 11 U.S.C. § 330. *In re Boddy*, 950 F.2d 334, 337 (6<sup>th</sup> Cir. 1991). The lodestar method requires that the court first determine a reasonable hourly rate, and then multiply the rate times the reasonable number of hours expended to perform actual,

necessary services. The Court may “then determine whether a global reduction or enhancement of the fees is in order.” *In re Atwell*, 148 B.R. 483, 492-93 (W.D. Ky. 1993). The ability to review fee applications in the context of each individual case “permits the Court to balance the following two competing interests: (1) rewarding the attorney practicing bankruptcy on a level commensurate with other areas of practice; against (2) the need to encourage cost-conscious administration.” *Allied Computer Repair, Inc.*, 202 B.R. at 884-85.

Courts have used many factors to analyze the number of hours which constitute a “reasonable number of hours.” The factors most often included by courts in their analysis are: 1) the nature of the services rendered; 2) the difficulties and complexities encountered; 3) the results achieved; 4) the size of the estate and the burden it can safely bear; 5) the duplication of services; 6) professional standing, ability, and experience of the applicant; 7) fairness to each applicant; and 8) the cost of comparable services other than for a bankruptcy case. *In re General Oil Distributors, Inc.*, 51 B. R. 794 (E.D. N.Y. 1985). The burden of proof is upon the applicant to justify the requested fees. *In re Hamilton Hardware Co., Inc.*, 11 B.R. 326 (Bankr. E.D. Mich. 1981).

Bankruptcy attorneys are not entitled to compensation merely because time recorded was actually expended. *In re Allied Computer Repair, Inc.*, 202 B.R. 877, 886 (Bankr. W.D. Ky. 1996). The purpose of bankruptcy is not to serve as a fund for payment of professional fees. Instead, the purpose is to maximize the estate for distribution to creditors. “Attorneys must be disabused of the erroneous notion that they are entitled to

compensation as long as the time recorded was actually expended.” *Allied Computer Repair* 202 B.R. at 886. Every dollar spent on legal fees results in a dollar less that is available to creditors. *Id.* Attorneys should use “billing judgment” and make a good faith effort to “eliminate unproductive time or to reduce hours on productive projects where the total amount billed would be unreasonable in relation to the economic value of the matter in question.” *In re Atwell*, 148 B.R. 483, 490-492 (W.D. Ky. 1993)(billing judgment applicable in determining both the hourly rate and number of billable hours).

C. Trustee’s Objections

1. Fee Application Filed Too Soon

In this case, the Trustee objects to the fee application because it was filed only 69 days after the previously filed fee application. Pursuant to 11 U.S.C. § 331, an attorney may not apply to the court more than once every 120 days for compensation *unless the court permits*. Counsel stated that he had to file his third fee application in less than 120 days because this case is about to close and Counsel would not be able to collect the balance owed him unless an order is entered allowing the fees. This Court finds that the services set forth in the third fee applications were reasonable and necessary because Counsel aided Debtors in seeking an extension to the order allowing Debtors to incur post-petition debt to pay off their chapter 13 plan. Therefore, in this case, the Court permits the filing of the third fee application in less than the 120 day interval set forth in § 331.

## 2. Hourly Rate Too High

The Trustee also objects to the hourly rate charged by Debtor's attorney, asserting that the rate is excessive. Bankruptcy attorneys are generally entitled to an hourly fee in line with the prevailing market rates in the community. *In re ACT Manufacturing*, 281 B.R. 468, 486 (Bankr. D. Mass. 2002) ("[T]he Court should apply the rate customarily charged for similar services in the locality..."). The Court may, itself, determine the prevailing market rate in the community and thus evaluate the reasonableness of the attorneys' hourly rates. *In re Computer Learning Centers*, 285 B.R. 191, 227 (Bankr. E.D. Va. 2002). "The court is in an excellent position to evaluate the prevailing market rate for attorney's fees by virtue of the innumerable fee applications presented to [it] . . . The very number of applications provides an exceptional view of the breadth and depth of the legal community and the fees charged . . ." *Id.*

In this case, Debtor's counsel charges \$240 per hour. While that hourly rate is not inherently unreasonable for an experienced and competent lawyer in the Chapter 13 context, it is a high rate and carries with it a responsibility to be extremely efficient. In this case, this Court finds that counsel acted in an extremely efficient manner which serves well both Debtors and their creditors. Not only did Debtors' counsel aid Debtors in promptly confirming their case but also aided Debtors in their attempts to pay off their case approximately two years after filing – a most unusual result. For this reason, the Court approves counsel's \$240 per hour rate in this case.

## III.

## CONCLUSION

For the reasons stated above, the Court DENIES the Trustee's objections and awards attorney fees in the amount of \$270.00 and costs in the amount of \$17.30, for a total award of \$287.30.